

Africa, Global Human Rights and International Relations Subcommittee
Northern Ireland Human Rights: Update on the Cory Collusion Inquiry Reports
Excerpts of Remarks of Rep. Chris Smith
March 16, 2005

The purpose of today's hearing is to examine the action taken by the British and Irish governments in order to comply with the Cory Collusion Inquiry Reports.

The reports, completed in 2003, are the work of Judge Peter Cory, a preeminent, retired justice of the Supreme Court of Canada. As part of the peace process in Northern Ireland, Judge Cory was appointed jointly by the British and Irish governments to investigate allegations of state-sponsored collusion in six high-profile murders, including the 1989 murder of human rights attorney Patrick Finucane. The two governments agreed that in order to move forward in the peace process, past allegations of state-sponsored collusion had to be openly addressed.

Today's hearing is the tenth hearing that I will chair on the subject of human rights and policing reform in Northern Ireland. Each hearing has either focused upon or discussed in part the murder of Patrick Finucane. The case has widespread implications for the rule of law in Northern Ireland as Mr. Finucane, a defense attorney, was targeted simply because of the politics of his clients.

After an eighteen-month investigation, Judge Cory found enough evidence of collusion in five of the six murder cases and called for independent public inquiries into those five cases, including the murder of Patrick Finucane.

It is important to note that the Weston Park Agreement -- an accord signed in 2001 to revive the faltering peace process -- obligated both London and Dublin to establish a public inquiry if recommended by Judge Cory. The precise wording of the agreement was “will implement,” not “may implement,” or “should try to” implement. They said “they will.”

Yet, nearly eighteen months after Judge Cory submitted his report to the British government, it has yet to establish the requisite public inquiry into the Finucane murder case.

And why not? After a year and a half of delays, exceptions and excuses, it is time for the British government to comply with the Weston Park Agreement. The success of the Northern Ireland peace process – struggling with its most difficult challenges to date – is predicated upon the full and faithful implementation of the obligations made by the two governments at Weston Park. If the citizens cannot count on the institutions of government to deliver on their commitment to secure equal justice for all, confidence will erode and hope for a just and lasting peace could slip away.

Over the past eight years, all of our witnesses have stressed that justice in a civil society is turned on its head – is perverted – when government officials act with impunity and intimidate, harass and maybe even participate in the murder of a defense attorney. The Cory Report and its call for a Public Inquiry into allegations of state-sponsored collusion in Patrick Finucane’s murder underscore the critical links between government accountability, public confidence in the rule of law, and the prospects for a peaceful future.

In May 2004, here on Capitol Hill, Judge Peter Cory made the first public presentation of his findings in all six high-profile cases. At a session I convened as chairman of the Commission on Security and Cooperation in Europe, Judge Cory painstakingly described evidence of possible collusion relating to the Finucane murder and activities of the army intelligence unit (FRU: Force Research Unit) and of the police force, particularly the Special Branch of the RUC.

Judge Cory reported that Mr. Finucane was a prime target of paramilitary forces for nearly a decade before his killing, but that no steps were taken to warn him of the direct and imminent threat against his life. In his report Judge Cory concluded: *“...there is strong evidence that collusive acts were committed by the Army (Force Research Unit), the RUC SB (Special Branch) and the Security Service. I am satisfied that there is need for a public inquiry.”*

With regard to the British Army, Judge Cory focused on government-paid double agent Brian Nelson, who was a central player within the UDA (Ulster Defense Association). Nelson had direct influence over targeting operations. The Cory report stated, *“If Nelson is correct in stating that he told his handlers that Patrick Finucane was a target, and no steps were taken by FRU (the Army) to either warn Patrick Finucane or otherwise intervene then that would be capable of constituting a collusive act. Only a public inquiry can determine whether this occurred. The evidence I have seen warrants the holding of a public inquiry on this issue.”*

With regard to the RUC, the Cory report found: *“SB (Special Branch) rarely took any steps to document threats or prevent attacks by the UDA, whereas pro-active steps were routinely taken in connection with PIRA and*

other Republican threats. The failure to issue warnings to person targeted by the UDA often led to tragic consequences...The failure to act on information received by RUC Special Branch, both before and after the Finucane murder, could be found to be indicative of collusion and should be the subject of public inquiry.”

Given the volume of testimony Congress had already received from human rights experts, the Finucane family, the UN Special Rapporteur on the independence of judges and lawyers in the United Kingdom, as well as the compelling findings of the Cory Collusion Inquiry, it seemed that the establishment of a Public Inquiry into the Finucane case would be a no-brainer. Instead it has been treated like a non-starter.

First, the British government argued it could not hold a public inquiry while it continued to pursue the prosecution of Kenneth Barrett, the gun man charged with Pat Finucane’s murder. Judge Cory soundly rejected this when he said: *“This is one of the rare instances where a public inquiry should take precedent over a prosecution if there is to be peace in the community.”*

Since Judge Cory’s testimony last year, Kenneth Barrett has been convicted of the murder of Patrick Finucane. However, it is widely understood that this criminal prosecution does little to address and/or resolve the concerns raised by Judge Cory regarding the possibility of state-sponsored collusion in the murder of Patrick Finucane. Nor does it enable the British government to meet its responsibilities in the Weston Park Agreement.

Ironically, immediately following the prosecution of Barrett, the British government announced it would go forward with a public inquiry

into the murder of Patrick Finucane. Six months later, no such inquiry has been established.

With deep sorrow we note that yesterday marked the sixth anniversary of the brutal murder of Northern Ireland Solicitor Rosemary Nelson. Following Judge Cory's recommendation, the British government recently established the public inquiry into her murder, and we look forward to hearing from one of our witnesses today about the status of that inquiry.

That said, however, we cannot help but remember that it was Rosemary Nelson, who gave one of the most riveting and compelling testimonies here in this very room calling for a public inquiry into Patrick Finucane's murder.

In September, 1998, as a witness at our third hearing, Rosemary Nelson bravely testified about the harassment, intimidation and threats made against her by RUC officers. She said she had been physically assaulted by a number of RUC officers and that she had received death threats. She made it clear she thought they would kill her.

She added, "No lawyer in Northern Ireland can forget what happened to Patrick Finucane, nor dismiss it from their minds." Six months after her testimony, Northern Ireland attorney Rosemary Nelson was – as she eerily predicted – murdered, killed by cowardly assassins in a vicious car bomb attack. We do not know what, if any role, any RUC officer may have played in Rosemary's death. Hopefully the public inquiry will shed light on the RUC's decisions to harass and intimidate her, as well as ignore the known death threats against her.

Even with three of its four required public inquiries underway, the British government continues to throw up roadblocks to the Finucane inquiry. It argues now that new legislation is needed before the inquiry can be established. Not surprisingly, its proposal for a new Inquiries Bill has already threatened the public perception and credibility of any investigation that comes after its enactment.

The fear is that the new bill will give the government additional powers and undermine the independence of the investigating commissioners. The commissioners would have no powers for setting the parameters of their inquiry. Instead of the parliament, government ministers would decide who will hold the inquiry, what the terms of reference will be, whether hearings will be held in public, whether evidence will be published, who will be called as a witness, if subpoena power is warranted, and whether the report will be published.

Judge Cory has stated that any inquiry conducted under these terms would not comply with the standards and recommendations of his report. Lord Saville, who chairs the Bloody Sunday Inquiry, has criticized the new bill and cautioned that “such ministerial interference” would be “unjustifiable”.

Whether new legislation is passed or not, the British government has the power to set up a public inquiry into the murder of Patrick Finucane that is Cory-compliant. Congress has passed three separate bills that I have authored calling on the British government to establish an independent public inquiry into the murder of Patrick Finucane. The most recent of these, signed by President Bush, states US support for independent judicial

public inquiries into the Finucane and Nelson murders as a way to instill confidence in policing in Northern Ireland.

Similarly, representatives of the Irish government, including Prime Minister Bertie Ahern, have repeatedly stated their strong support for a Public Inquiry into the Finucane case. And on February 14, 2005, two dozen Members of the US Congress sent a letter to British Prime Minister Tony Blair calling for a Public Inquiry into the Finucane case.

In signing the Weston Park Agreement, the British government has also stated its commitment for public inquiries into certain high-profile murders. It's time to live up to that commitment. It's time to act.

No more exceptions, no more excuses.